Canada Industrial Relations Board Conseil canadien des relations industrielles

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Reasons for Decision

Bruno Cartier,

complainant,

and

Videotron G.P.,

respondent.

Board File: 29495-C
Neutral Citation: 2012 CIRB **658**
October 3, 2012

The Canada Industrial Relations Board (the Board) was composed of Mr. Claude Roy, Vice-Chairperson, and Messrs. Daniel Charbonneau and André Lecavalier, Members.

Counsel of Record

Mr. Giuseppe Sciortino, for Mr. Bruno Cartier;

Mr. Hubert Graton, for Videotron G.P.

These reasons for decision were written by Mr. Claude Roy, Vice-Chairperson.

I–Nature of the Complaint

[1] Section 16.1 of the *Canada Labour Code (Part I–Industrial Relations)* (the *Code*) provides that the Board may decide any matter before it without holding an oral hearing. Having reviewed all of

the material on file, the Board is satisfied that the documentation before it is sufficient for it to determine this matter without an oral hearing.

[2] On June 26, 2012, Mr. Bruno Cartier (the complainant) filed a complaint pursuant to section 94(3)(*a*)(i) of the *Code*, alleging that Videotron G.P. (the employer) had terminated his employment on March 27, 2012, because of his union activities and his duties as a shop steward. In its response filed on July 11, 2012, the employer raised a preliminary argument regarding the timeliness of the complaint, submitting that the complaint had been filed more than 90 days after the date of termination of employment, contrary to section 97(2) of the *Code*.

[3] The following is the Board's decision on the preliminary argument.

II–Facts and Background

[4] The complainant alleges that his employment was terminated on March 27, 2012. In its response, the employer submits that the complaint was not filed within the 90-day time limit for filing a complaint set out in section 97(2) of the *Code*. Given that the issue of timeliness of a complaint goes to the jurisdiction of the Board to decide a matter (see *Pietrantonio*, 2003 CIRB 256; *Coull* (1992), 89 di 64; and 17 CLRBR (2d) 301 (CLRB no. 957); and *D'Eri* (1992), 89 di 211 (CLRB no. 969)), the Board sought written submissions from the parties concerning the preliminary argument raised by the employer.

[5] The complainant filed his submissions on August 30, 2012. On September 13, 2012, the employer informed the Board that it would not be filing a response to the complainant's submissions.

[6] According to the Board's calculation, the time limit for filing this complaint ended on June 25, 2012. However, pursuant to the *National Holiday Act*, R.S.Q., c. F-1.1, where June 24 (a statutory public holiday in Quebec) falls on a Sunday, the 25th of June is a public holiday. As a result, the Board's offices in Quebec were closed on June 25, 2012. This complaint was filed the following day, that is, June 26, 2012.

III–Analysis and Decision

[7] The Board finds the complaint to be timely, for the reasons set out below.

[8] Sections 97(1) and 97(2) of the *Code* provide as follows:

> 97.(1) Subject to subsections (2) to (5), any person or organization may make a complaint in writing to the Board that
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> (*a*) an employer, a person acting on behalf of an employer, a trade union, a person acting on behalf of a trade union or an employee has contravened or failed to comply with subsection 24(4) or 34(6) or section 37, 47.3, 50, 69, 87.5 or 87.6, subsection 87.7(2) or section 94 or 95; or
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> (*b*) any person has failed to comply with section 96.
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> (2) Subject to subsections (4) and (5), a complaint pursuant to subsection (1) must be made to the Board not later than ninety days after the date on which the complainant knew, or in the opinion of the Board ought to have known, of the action or circumstances giving rise to the complaint.

[9] Under section 16(*m*.1) of the *Code*, the Board may extend the time limit for filing a complaint. However, the Board has stated that it will not automatically relieve a party from compliance with the 90-day time limit under section 97(2) of the *Code* for the filing of a complaint, as labour relations matters must be brought to the Board forthwith (see *Torres*, 2010 CIRB 526, application for judicial review dismissed by the Federal Court of Appeal in *Buenaventura Jr.* v. *Telecommunications Workers Union*, 2012 FCA 69).

[10] The Board will consider extending time limits in exceptional circumstances, such as in cases where the delay in filing is beyond the complainant's control. The Board will consider the length of the delay and the justification for it.

[11] In view of all the circumstances in this matter, the Board could exercise its discretion under section 16(*m*.1) of the *Code* to extend the time limit. However, it will not be necessary to do so, since the issue here is the calculation of the time limit.

[12] Section 9 of the *Canada Industrial Relations Board Regulations, 2001* (the *Regulations*) provides as follows:

> 9. Where the time limit for the filing of a proceeding expires or falls on a Saturday or a holiday as defined in the *Interpretation Act*, the thing may be done the day next following that is not a Saturday or a holiday.

[13] The issue to be determined by the Board is whether June 25, 2012, was a holiday within the meaning of the *Interpretation Act*, R.S.C., 1985, c. I-21, and whether the time limit for filing the complaint could be extended to June 26, 2012, given the circumstances of this matter.

[14] Section 35(1) of the *Interpretation Act* provides the following definition of the term "holiday":

> 35.(1) ... "holiday" means any of the following days, namely, Sunday; New Year's Day; Good Friday; Easter Monday; Christmas Day; the birthday or the day fixed by proclamation for the celebration of the birthday of the reigning Sovereign; Victoria Day; Canada Day; the first Monday in September, designated Labour Day; Remembrance Day; any day appointed by proclamation to be observed as a day of general prayer or mourning or day of public rejoicing or thanksgiving; and any of the following additional days, namely, ...

[15] It further provides that:

> (*a*) in any province, any day appointed by proclamation of the lieutenant governor of the province to be observed as a public holiday or as a day of general prayer or mourning or day of public rejoicing or thanksgiving within the province, and any day that is a non-juridical day by virtue of an Act of the legislature of the province, and...

[16] Section 26 of the *Interpretation Act* reads as follows:

> 26. Where the time limited for the doing of a thing expires or falls on a holiday, the thing may be done on the day next following that is not a holiday.

[17] Section 12 of the *Interpretation Act* provides as follows:

> 12. Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

[18] Thus, it is necessary to determine whether June 25, 2012, was a holiday or non-juridical day within the meaning of the provincial legislation, pursuant to section 35(1)(*a*) of the *Interpretation Act*.

[19] Bijural tradition and the application of provincial law were clarified by Parliament in sections 8.1 and 8.2 of the *Interpretation Act*, amended in 2001 by the *Federal Law–Civil Law Harmonization Act, No. 1*, S.C. 2001, c. 4, which recognized the principle of complementarity of Quebec civil law to federal law when the conditions in section 8.1 are met (see *Grimard* v. *Canada*, 2009 FCA 47; and *Canada (Attorney General)* v. *Constance St-Hilaire*, 2001 FCA 63 (*St-Hilaire*)).

[20] In *St-Hilaire*, *supra*, dated March 19, 2001, Décary J.A. commented on the complementarity of Quebec civil law prior to the amendments to the *Interpretation Act* that took effect on June 1, 2001. He stated the following respecting section 8.1:

> [33] In Quebec it is trite law that the "ordinary law" of the province is constituted by the *Civil Code* and the *Code of Civil Procedure*, although these are statutory documents. (See *Exchange Bank of Canada* v. *R.* (1886), 11 App. Can. 157 (P. C.); "La Couronne en droit canadien", Ministère de la Justice du Canada (Cowansville: Éditions Yvon Blais, 1992), p. 148.)
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> ...
>
> [35] It is the Constitution of Canada itself which provides that some federal laws have differing effects according to whether they are applied in Quebec or in the other provinces. By guaranteeing the perpetuity of the civil law in Quebec and encouraging in section 94 the uniformization of the laws of provinces other than Quebec relative to property and civil rights, the *Constitution Act, 1867* enshrines in Canada the federal principle that a federal law that resorts to an external source of private law will not necessarily apply uniformly throughout the country. To associate systematically all federal legislation with common law is to ignore the Constitution.
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> [36] A judge who must interpret and apply a federal enactment in a dispute concerning civil rights in Quebec must know that as a general rule, and subject to what will be said later in regard to so-called public law statutes, the suppletive law is the civil law. This does not mean that no attempt should be made to harmonize the effects of federal statutes throughout the country wherever this is possible in the private law. (See: *Canada v. Construction Bérou* (1999), 251 N.R. 115 (F.C.A.); *Biderman v. Canada* (2000), 253 N.R. 236 (F.C.A.).) What it does mean is that asymmetry is the rule under the Constitution. It also means that if there is harmonization, it may draw equally on both the civil law and the common law.
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> [37] A Quebec litigant involved in an action pertaining to his civil rights under a federal enactment that is silent in this regard is entitled to expect that his civil rights will be defined by the Quebec civil law, even if the adverse party is the federal government. As Professor Morel clearly states, in "Harmonizing Federal Legislation with the Civil Code of Québec: Why and Wherefore?", a study published in the Department of Justice Canada collection (*supra*, par. 25):
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> "The complementarity of federal private law legislation with Quebec civil law – as with the basic law of every province – is the rule both in principle and, if only because Parliament rarely interferes with it, in practice. (p. 15)"

[21] Section 1 of Quebec's *National Holiday Act* provides as follows:

> 1. The 24th of June, St. John the Baptist Day, is the National Holiday.

[22] Section 2 of that Act stipulates the following regarding June 25 where the national holiday falls on a Sunday:

> 2. The 24th of June is a statutory public holiday.
>
> Where the date specified in the first paragraph falls on a Sunday and Sunday is not a regular working day for the employee, the 25th of June is a public holiday for the employee for the purposes of sections 4 to 6, which must then be read as though that day were substituted for the 24th of June.

[23] Under section 6 of the *National Holiday Act*, where June 24 falls on a Sunday, as was the case in 2012, the employer must grant a compensatory holiday. Section 6 reads as follows:

> 6. Every employer must grant a compensatory holiday of a duration equivalent to a regular day of work where 24 June falls on a day that is not a regular working day for the employee.
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> Where the employee is remunerated on a time basis or on the basis of production or on any other basis, the employer must grant him a compensatory holiday or pay him the indemnity provided for in section 4.
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> **The compensatory holiday must, in all cases, be taken on the working day preceding or following 24 June**. However, if, at that time, the employee is an [*sic*] annual leave, the holiday is taken at a date agreed upon by the employer and the employee.
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> (emphasis added)

[24] June 24 is a holiday, but June 25 is not a holiday or non-juridical day within the strict sense of section 35(1)(*a*) of the *Interpretation Act*. Since June 24, 2012, fell on a Sunday, June 25 became a public holiday as provided for under section 2 of Quebec's *National Holiday Act*, section 6 of which provides for a compensatory holiday on June 25.

[25] The compensatory holiday means that June 25 became a public holiday and was not a regular working day pursuant to the *National Holiday Act*. Further, section 8 of that Act stipulates that the Act is a public statute. Consequently, the Board's offices located in Montréal were closed on June 25, 2012.

[26] The Board is of the view that section 9 of the *Regulations* must "be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects," pursuant to section 12 of the *Interpretation Act*. It is worth noting that, had the complaint been filed on a Saturday, which is not a holiday within the meaning of the *Interpretation Act*, the time limit for filing the complaint would have been extended to the day next following that was not a Saturday or a holiday, in accordance with section 9 of the *Regulations*. Further, even though Monday, June 25, 2012, was not a holiday or non-juridical day within the meaning of section 35(1)(*a*) of the *Interpretation Act*, the complainant would not have been able to file his complaint with the Board's offices in Montréal on June 25, as June 25 was not a regular working day.

[27] In *Nowaczek* v. *Canada (Attorney General)*, [1995] F.C.J. No. 273 (QL), the Federal Court dealt with a similar issue, respecting the calculation of time limits. In that case, an application for judicial review had been filed in relation to a decision issued by the Public Service Commission Appeal Board (the Appeal Board), which had determined that the appeal was untimely and that it consequently lacked jurisdiction to entertain the matter. The appeal had been filed on Tuesday, January 4, rather than Monday, January 3, 1994. In that matter, the *Canada Labour Code* provided that, where New Year's Day fell on a weekend, the employee was entitled to a holiday with pay on the day immediately preceding or following the 1st day of January. The Public Service Commission had accordingly decided to close its offices on the Monday following January 1, that is, on January 3, 1994. Although January 3 was not a holiday within the meaning of section 35(1) of the *Interpretation Act*, the Court found that the Appeal Board had erred in finding that it lacked jurisdiction to entertain the matter, given that the Commission's offices were closed on January 3.

[28] In Quebec, federal government offices, including the Board's offices, were closed on June 25, 2012. The filing of the complaint was delayed to the first regular working day following that day, that is, June 26, 2012.

IV–Conclusion

[29] The Board finds that the complaint filed on June 26, 2012, is timely. The preliminary argument raised by the employer is dismissed.

[30] This is a unanimous decision of the Board.

Translation

Claude Roy
Vice-Chairperson

André Lecavalier
Member

Daniel Charbonneau
Member